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Nos. 335 and 336

In the Supreme Court of the United States

OCTOBER TERM, 1946

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

PORTLAND TERMINAL COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE PETITIONER

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No. 335

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 336

L. METCALFE WALLING, ADMINISTRATOR OF THE WAGE AND HOUR DIVISION, UNITED STATES DEPARTMENT OF LABOR, PETITIONER

v.

PORTLAND TERMINAL COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the district court in No. 335, *Walling* v. *Nashville, Chattanooga & St. Louis Ry.*

(CR. 356–371),[1] is reported at 60 F. Supp. 1004. The majority and dissenting opinions of the Circuit Court of Appeals for the Sixth Circuit (CR 378–382) are reported at 155 F. 2d 1016. The opinion of the district court in No. 336, *Walling v. Portland Terminal Co.* (PR. 123–126), is reported at 61 F. Supp. 345. The majority and dissenting opinions of the Circuit Court of Appeals for the First Circuit (PR. 135–142) are reported at 155 F. 2d 215.

JURISDICTION

The judgment of the circuit court of appeals in No. 335 was entered on June 1, 1946 (CR. 378). The judgment of the circuit court of appeals in No. 336 was entered on April 29, 1946 (PR. 142). The petition for writs of certiorari in both cases was filed on July 29, 1946, and was granted on October 14, 1946 (CR. 383, PR. 144). The jurisdiction of this Court is based upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether persons being trained for jobs with respondents by performing the actual duties and functions of the jobs under the supervision of the regular employees are employees of the respond-

[1] References to the record in No. 335, the *Chattanooga* case, will be indicated by "CR," and in No. 336, the *Portland* case, by "PR."

ents within the meaning of the Fair Labor Standards Act during the period of training.

STATUTE INVOLVED

The pertinent provisions of the Fair Labor Standards Act of 1938 (c. 676, 52 Stat. 1060, 29 U. S. C. 201) are as follows:

SEC. 3. As used in this Act—

* * * * * *

(d) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political subdivision of a State, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(e) "Employee" includes any individual employed by an employer.

* * * * *

(g) "Employ" includes to suffer or permit to work.

SEC. 6. (a) Every employer shall pay to each of his employees who is engaged in commerce or in the production of goods for commerce wages at the following rates—* * *.

SEC. 14. The Administrator, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for (1) the employment of learners, of apprentices * * * under special certificates

issued pursuant to regulations of the Administrator, at such wages lower than the minimum wage applicable under section 6 and subject to such limitations as to time, number, proportion, and length of service as the Administrator shall prescribe * * *.

STATEMENT

Both of these suits were brought by the Administrator of the Wage and Hour Division to restrain the respondents from violating the minimum wage and record-keeping requirements of the Fair Labor Standards Act (CR. 2–6, PR. 1–5). The respondent in No. 335 operates an interstate railway system furnishing passenger and freight service and maintaining the customary shops, terminals, offices, and general railway facilities (CR. 3, 18). During the period covered by the complaint, all persons seeking employment as clerks, stenographers, switchmen, firemen, brakemen, messengers, callers, and porters, have been required to undergo a training period as a condition of their employment (CR. 73). Before commencing training, these workers file formal applications for employment, furnish references, take physical examinations, and, in some occupations, sign releases designed to protect respondent against claims for injuries (CR. 80, 149, 242).

The train service employees (switchmen, firemen and brakemen) are assigned to serve as "cubs" with regular crews without displacing any member of the regular crew (CR. 81, 367). But

they are trained only if it is expected that there will be a need for them as members of regular crews when the training has been completed (CR. 59, 65, 66, 128). Training under the supervision of a regular employee is required on each of the various jobs which will be performed by the trainee when he becomes a regular employee. Thus a switchman must train for several days on each of three shifts and work on each shift with the regular crew on each of seven different locations (CR. 29–30, 31). A yard fireman is required to train for at least four different jobs before being placed on the employment roll: firing the Diesel switch engine, firing the steam switch engine, hostler helper's job in the shop, and hostler helper's job on the outside (CR. 178). Over-the-road firemen must make fifteen or twenty runs, including trips in local service, local freight, fast freight, and passenger trips (CR. 95, 228). Brakemen are given a schedule which includes all the runs in each of the divisions (CR. 92, 242–245).

The cubs work the same hours (frequently over 12 hours a day—CR. 38, 186, 246, 253) and perform the same functions as the regular employees (CR 179, 186, 215–216, 252, 256). The cub switchmen throw switches, couple and uncouple cars, give signals, help classify trains, set hand brakes, and cut and connect air hose (CR. 32, 187, 215); cub firemen switch valves, keep a watchout for

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safety, shovel coal, make engines ready for the road, test them, fill the sand dome, coal bin and water tank and get the fire in proper condition (CR. 178, 179, 232); cub brakemen do switching, signalling, coupling and uncoupling of cars (CR. 244, 252, 256). In addition, cub brakemen when traveling between stations, whether a run is on their schedule or not, are expected to assist in loading and unloading freight (CR. 94, 244, 248, 249). The cubs do not displace the members of the regular crews under whom they work; the latter are responsible for seeing that the work is properly done and are paid their customary wages (CR. 180).

The length of the cubbing period varies with the occupation and respondent's need for regular workers (CR. 41, 213). Generally, the training period ranges from ten to thirteen days for switchmen (CR. 30, 31) to as long as six to seven weeks for the over-the-road firemen (CR. 227). However, the manual operations of some of the tasks may be learned in a few minutes (CR. 33, 34, 252). The principal purpose of the training is to teach the switchmen and the yard firemen the physical arrangement of respondent's yard and the signals peculiar to respondent's operations (CR. 33–36, 53, 62, 180–181), and to teach the over-the-road firemen and brakemen the road on which they will travel as regular employees (CR. 97, 236–237, 247–253). Thus, new workers go

through a "training period" even if they have already had experience in the particular occupation (CR. 205–206). Men with experience in firing, and already employed as regular firemen, have been required to cub in order to learn the new road when transferred from one of respondent's divisions to another (CR. 97–98).

Until the time of suit, the respondent also required training or "posting" under a regular employee by clerks, stenographers, messengers, callers, and porters (CR. 109, 126, 131, 140). At respondent's Chattanooga yard, new yard clerks and office clerks worked without pay eight hours or more a day, five to seven days a week, for periods ranging from three to eight weeks (CR. 19, 126, 139). Frequently, these clerks worked twelve or fourteen hours and in at least one instance twenty-four hours a day (CR. 139). The trainee-clerk was expected to work on each shift and on several different clerical jobs (CR. 106, 129–130, 158). In the same manner as regular employees, the clerks, among other things, kept records of incoming and outgoing freight trains, prepared lists of outgoing freight, checked way bills against incoming freight, and made out way bills and expense bills (CR. 107, 115–116, 130, 156). The trainees received their instructions from the supervisor, but after the first two days, they did the checking, made the entries, and prepared the bills themselves (CR. 116). Stenog-

raphers, graduated from business college and with years of experience, were required to work five or six days without pay to become familiar with respondent's office procedures (CR. 153). "Callers," whose duties are to call train crew members before time for their departure, messengers, and porters worked from two to six days without pay, learning the duties of their jobs by actually performing the work under supervision (CR. 151–155).

The respondent "recognized the possibility" that the clerks, stenographers, messengers, callers and office porters, "on rare occasions might perform a beneficial service for defendants at the same time that the regular employees were doing a similar but not identical assignment" (CR. 18–19). It asserts that for this reason, these trainees were paid in accordance with the requirements of the Act after its effective date (CR. 18–19). In fact, however, the practice of not paying them continued, at least at the Chattanooga yard, until suit was brought in November 1944 (CR. 19). In any event, respondent continues to contend that it does not "employ" these workers while they are training, that the money paid is not compensation for employment, and that it is under no duty to comply with the Act with respect to them (CR. 151, 175, 304).

Prior to December 1943, cub switchmen, firemen and brakemen received no compensation for their

work (CR. 48). In December 1943, "as an inducement or incentive" to obtain workers because of the manpower shortage created by the war, the company adopted the policy of paying them $5 a day provided that they subsequently became "regular" employees (CR. 75, 312). Workers who did not become "regular" employees received nothing for the time spent in training. In January 1945, the respondent adopted the practice of paying all cubs $5 a day, whether or not they were ultimately hired as "regular" employees (CR. 313). This practice, however, was a temporary expedient growing out of the war emergency (CR. 74, 75, 78, 304). The respondent continues to deny that the trainees are employees and asserts its right to discontinue the payments at any time (CR. 83, 84).

The respondent in No. 336 operates a terminal facility at Portland, Maine, serving several interstate railroads (PR. 20–21). The yard brakemen, who undergo a training period of one to two weeks substantially like that of the brakemen in No. 335, are the only persons involved in this action (PR. 26–27, 38–39, 124). Prior to October 1, 1943, they trained without compensation. Since that date, under an arrangement with the railroad union to cover the emergency period, they have been paid $4 per day for the training period after becoming regular employees. (Ex. 7, PR. 118.) Yard brakemen who did not complete the training re-

ceived nothing (PR. 16, 118). Deductions for Railroad Retirement tax were made by the respondent from these payments (PR. 98).

The district courts, in both cases, denied injunctions on the ground that the trainees were not employees within the meaning of the Act (CR. 372, PR. 126). These judgments were affirmed by the courts below with one judge dissenting in each case (CR. 378, PR. 135). In No. 336, the First Circuit Court of Appeals held that, although the trainees were within the literal language of the Act's definitions, they were not employees because their work was not "pursued necessarily and primarily for the benefit" of the company (PR. 140). In No. 335, the trainees were held not to be employees by the Sixth Circuit Court of Appeals on the ground that the respondent did not "suffer or permit" them to work *for respondent* (CR. 380–381). Both courts also appear to have relied to some extent on the absence of a contract of employment. The dissenting judges in both cases were of the opinion that the definition of "employ" in Section 3 (g) of the Act, as including "to suffer or permit to work," brought the trainees within the Act's scope. Judge Magruder, dissenting in No. 336, was also of the opinion that the decision of the court constituted "a serious impairment of the administrative safeguards contained in Section 14 of the Act" (PR. 142).

SPECIFICATION OF ERRORS TO BE URGED

Both courts below erred:

1. In holding that the trainees were not employees of the respondents within the meaning of the Fair Labor Standards Act.

2. In affirming the judgments of the district courts which denied petitioner's prayers for injunctions.

SUMMARY OF ARGUMENT

The language of Section 14 of the Act which authorizes the Administrator to establish regulations for the "employment of learners" at substandard wages clearly contemplates that learners are employees within the scope of the Fair Labor Standards Act. When Congress referred to "learners" in Section 14, it used a term which had a definite connotation in the practice of industry. The legislative history of the Act indicates that the term was used in its ordinary industrial sense. The trainees involved in this action were clearly learners in the usual industrial sense, and, therefore, employees within the Act. To hold otherwise would narrow the application of Section 14 in a manner which would impede the accomplishment of the purpose for which that Section was enacted.

The Congressional assumption, in Section 14, that industrial learners are employees finds support in the broad definition of "employ" in Sec-

tion 3 (g) as including "to suffer or permit to work." The trainees here, by performing the actual duties of the job, were engaged in work which was not only suffered or permitted but in fact required by respondents as a condition to regular employment. Moreover, railroad trainees were considered employees even under the more limited concepts of the common law. Training similar to that in the instant cases has long been an established custom in the railroad industry. The question of the status of trainees under the common law has frequently arisen and the courts, with singular consistency, have held trainees to be employees. Surely, then, they are employees under a statute drafted with the manifest purpose of expanding the common-law concept of employment.

ARGUMENT

I

THE PROVISIONS OF THE ACT FOR THE REGULATION OF "LEARNERS" DEMONSTRATE THE CONGRESSIONAL INTENT TO INCLUDE THESE TRAINEES AS EMPLOYEES WITHIN THE SCOPE OF THE STATUTE

Section 14 of the Act provides that "The Administrator, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations or by orders provide for (1) the employment of learners * * * at such wages lower than the minimum * * * as

the Administrator shall prescribe." This provision for regulation by the Administrator of the employment of learners plainly contemplates that persons engaged as learners are employees within the meaning of the Act.

The legislative history of the Act confirms this conclusion. The Congressional purpose to bring learners within the scope of the Act was clear from the beginning. At the very outset of the hearings on the proposed legislation which was eventually enacted as the Fair Labor Standards Act, Assistant Attorney General Jackson directed the attention of the House and Senate Committees to the provisions for the employment of learners and apprentices at subminimum wage rates.[2] Although the various bills proposed contained no definition of learners and apprentices, it was recognized that those terms were intended to include "employees who do not meet the usual qualifications of employment."[3] The legislative history of the Act reveals that at every stage, both the House and Senate bills contained provisions for the employment of learners substantially like those which were enacted into law.[4] There can

[2] Joint Hearings of the Senate Committee on Education and Labor and House Committee on Labor on S. 2475 and H. R. 7200, 75th Cong., 1st sess., 1937, pp. 37–38.

[3] *Id.*, at 44, 50.

[4] See e. g., S. Rep. No. 884, 75th Cong., 1st sess., p. 7; H. Rep. No. 1452, 75th Cong., 1st sess., p. 15; H. Rep. No. 2182, 75th Cong., 3d sess., p. 13; H. Rep. No. 2738, 75th Cong., 3d sess., pp. 17, 25, 33.

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therefore be no question but that Congress intended to include learners and apprentices among the employees subject to the Act.

Only two questions were raised during the debates on the bills with respect to the employment of learners. Representative Michener objected to the delegation of authority to control the employment of learners and apprentices (83 Cong. Rec. 7396). Representative Taylor raised the question whether there should be some beginning period during which no minimum of any sort should apply. He proposed to exclude learners and apprentices from the scope of the Act for a period of six months (83 Cong. Rec. 7389, 83 Cong. Rec. 7134, defeated 83 Cong. Rec. 7393). In proposing his amendment, Congressman Taylor referred to what he viewed as the desirability of completely excepting "beginners and apprentices" from the Act (83 Cong. Rec. 7391). The rejection of his proposal demonstrates the Congressional intent to include "beginners."

Thus Congress, in Section 14, clearly provided that the conditions under which learners could work below the minimum wage were to be regulated by the Administrator of the Wage and Hour Division, charged with the responsibility of enforcing the Act in the public interest. It deliberately decided not to leave these conditions to the discretion of employers who would normally be influenced by their own pecuniary interests.

The decision reached by Congress—to place the regulation of the employment of all beginners in the hands of the Administrator—was apparently due to the Congressional desire (1) to assure all workers, including learners, the minimum wage whenever possible and (2) to prevent evasion of the minimum wage provisions of the Act under the guise of employing "learners."[8] The statutory provision employed to carry out these objectives, in its use of the phrase "employment of learners," leaves no room for doubt that learners are embraced within the term "employee." There would have been no point to Section 14 if learners were not employees within the meaning of the Act.

Since it is clear that learners were intended to be subject to regulation under the Act, the only question remaining would appear to be whether respondents' trainees are learners within the statutory contemplation. The employment of learners in industry was a well-established practice when the Fair Labor Standards Act became law. A survey of 473 companies, made in 1937 by the National Industrial Conference Board, revealed[9] that 410 had training programs, and of the codes

[8] See 83 Cong. Rec. 7309; Joint Hearings, cited *supra*, note 2, pp. 37, 38, and 44.

[9] *Training for Industry*, National Industrial Conference Board (1937), pp. 1, 2, 20. See *Williams* v. *Evans*, 139 Minn. 32, 166 N. W. 504 (1918): "These terms ['learners' and 'apprentices'] have a modern meaning reasonably well understood."

promulgated under the National Industrial Recovery Act, 213 had provisions relating to the employment of learners. In the light of this well-established practice of employing learners in industry, one can say with assurance that Congress used the term in its ordinary industrial sense.

No significant differences can be perceived between learners in the railroad industry, such as respondents' trainees here, and learners in other industries. Variations in such matters as the period of training, the nature of the training, and the amount of compensation paid will, of course, occur. But the essential relationship of the training program to the industrial purpose is identical. The wide variety of workers who were considered learners in industry clearly encompasses respondents' trainees. As the Bureau of Labor Statistics observes, the term "learner" in its industrial context "is applied to beginners in occupations or trades * * * which * * * take a relatively short time to learn. A learner is variously defined in agreements as an employee with no previous experience in the industry; or as one who has not worked in the industry for a specified total period of time; or as one who has not heretofore performed the work for which he is hired."[1]

Authorities on industrial personnel policies have described customary learning programs in

[1] U. S. Bureau of Labor Statistics, Bulletin No. 686, *Union Agreement Provisions*, 1942, p. 191.

terms which reveal that respondents' programs are substantially the same as those in other industries which have not questioned that their trainees are employees under the statute. In a typical program, the learner first observes an experienced operator and then takes over the operation of the machine under the direction of the regular employee.[8] In other cases, the learner may practice on scrap materials, and may even spend part of

[8] "* * * we simply place two men on a machine, one a regular operator and the other an observer or learner. The learner * * * observes very closely the techniques used by the experienced operator and from time to time actually takes over the operation of the machine under the direction of the experienced man. * * * The learner is paid the minimum rate established for the industry during his period of service as an observer, which rate is increased as soon as he is assigned to a machine of his own." C. S. Matoon, Director of Personnel, Curtiss-Wright Aeroplane Division, writing in American Management Association, Personnel Series No. 47, *Principles and Methods of Industrial Training* (1941), "Mass Instruction of Inexperienced Employees," pp. 34–35.

"At first the learner does nothing but watch the operator. But after a few days he is allowed to help with the setup, then with increasingly difficult work until he can actually operate the machine himself * * *. [The learners] are started at 60 cents per hour." Ray J. Blyth, Personnel Director of the Warner and Swasey Company, writing in American Management Association, Production Series No. 126, *Industrial Training Programs for Increased Production* (1940), pp. 7–8. See also *infra*, note 16, pp. 21–22.

See also proceedings before the Wage and Hour Division, United States Department of Labor, in the matter of Learner Regulations in the Textile Industry Pursuant to Section 14 of the Fair Labor Standards Act (held November 28, 29, 30, 1938; reopened October 12 and December 13, 1939):

"Since it takes months or even years before an operator be-

his time receiving classroom instruction.[8] In all cases, the learner, who is also referred to interchangeably as a student, a trainee, or an observer, is acquiring the skill or the knowledge which he will use when he becomes a fully trained employee of the employer affording the training. In other respects, too, the respondents' training programs fit the typical industrial learner pattern. In the usual case, "The length of the learning period specified in agreements ranges from two weeks to one year; the most usual terms being 30

comes truly skilled, he cannot be permitted the free use of a machine to produce what he can at piece work rates. The company must prevent spoilage of goods so far as possible and must educate the learner under the tutelage of an expert until he is capable of taking over a machine and producing a large proportion of perfect goods.

"Whatever a learner on such an operation is paid is a total loss as he produces nothing and at first is even a hindrance to his teacher, who, if he is to teach the learner, must let him do jobs that the teacher, himself, could do more quickly, thus cutting down the teacher's earnings. As the teacher is usually a skilled operator who is willing and able to teach also it frequently means that he has to be paid extra over the regular piece work rate to teach in order to offset his reduced earnings." Testimony of Mr. Wilwyn Herbert, Secretary, Narrow Fabrics Institute, New London, Conn., November 29, 1938, p. 140.

[8] See, e. g., the training program of the Ford Company, described by the Superintendent of the Henry Ford Trade School in American Management Association, Personnel Series No. 42, *Practical Techniques of Industrial Training* (1941), pp. 14–16; and the programs of the Sperry Gyroscope Company and the Bethlehem Steel Company described by Alvin E. Dodd and James O. Rice, President and Editor, respectively, of the American Management Association, in *How to Train Workers for War Industry* (1942), pp. 52, 56.

days, 60 days, and 3 months."[10] Respondents' cubs train from one to two weeks in No. 336 and from a few days to seven weeks in No. 335 (PR. 39, CR. 227). And just as respondents' trainees are free not to continue in respondents' employ at the conclusion of their learning period, so learners generally may, and frequently do, sever relations with their employers during or at the end of their training.[11] Although the prevailing custom in industry prior to the Fair Labor Standards Act was to pay wages to learners, this was not the universal practice.[12] Industry has recognized that the training of learners is a neces-

[10] U. S. Bureau of Labor Statistics, Bulletin No. 686, *Union Agreement Provisions*, 1942, p. 193.

[11] Tead and Metcalfe, *Personnel Administration* (1933), p. 127. See also *infra*, note 19, p. 29.

[12] *Union Agreement Provisions*, U. S. Department of Labor, Bureau of Labor Statistics, Bulletin No. 686 (1942), p. 192; *Policy on Wages Below the Minimum*, Office of the National Recovery Administration, Division of Review, Work Materials No. 45 (March 1936), p. 3; *The Development of Minimum-Wage Laws in the United States*, 1912 to 1927, U. S. Department of Labor, Women's Bureau, Bulletin No. 61 (reprinted 1934) pp. 205-224; see minimum wage determinations under the Walsh-Healey Public Contracts Act for the Cotton Garment and Allied Industries, effective August 2, 1937, 2 F. R. 1333; Men's Neckwear Industry, effective August 2, 1937, 2 F. R. 1336; Men's Raincoat Industry, effective August 2, 1937, 2 F. R. 1336; Seamless Hosiery Industry, effective August 2, 1937, 2 F. R. 1338; and Work Glove Industry, effective August 2, 1937, 2 F. R. 1339. *Personnel Policies in Cotton-Textile Industry*, 42 Monthly Labor Review (June 1936), p. 1485. Also, *Productivity of Labor in the Cotton-Garment Industry*, U. S. Department of Labor, Bureau of Labor Statistics, Bulletin No. 662 (November 1938) page 20; *Wages in Cotton-Goods Manufactur-*

sary part of our industrial system.[15] And its concept of the incidents of learner training was clearly in the mind of Congress when the regulatory provisions of Section 14 were drafted and enacted.

Although the trainees in these cases are plainly "learners" within the customary meaning of the term, three circuit courts of appeals have held that they are not "employed as learners" within the scope of the Act.[16] In reaching this conclusion the courts have emphasized (1) that the work of the trainees resulted in no immediate benefit to the railroads, and (2) that the trainees had agreed that they were not employees during the training period. We shall show that the lack

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ing, U. S. Department of Labor, Bureau of Labor Statistics, Bulletin No. 663 (November 1938), pp. 93, 94; *Training for Industry*, National Industrial Conference Board (1937), pp. 1, 2, 20.

[15] "The operations of each organization are so numerous and the conditions in each enterprise so different that no institution outside of industry and apart from actual production can fully equip individuals for the demands of each line of business. Even if our schools were capable of properly training employees for industry and if society would sanction the assumption of such a responsibility, circumstance would still make it imperative for each establishment to provide its own system of training." Watkins, Gordon S., and Dodd, Paul A., *The Management of Labor Relations* (1938), pp. 403–404. See also *infra*, note 17, p. 23.

[16] The courts below relied on *Walling* v. *Jacksonville Terminal Co.*, 148 F. 2d 768 (C. C. A. 5), which presented a factual situation substantially similar to those now before this Court. For the reasons set forth in this brief, we believe that the *Jacksonville* decision is erroneous.

of immediate benefit in no way differentiates the trainees in this case from other learners who are universally recognized to be employees under the Act, and that parties, by private agreement, cannot narrow the scope of a remedial statute.

Management has always recognized that the typical learner is not, during the learning period, of any immediate benefit to his employer.[15] As Judge Magruder, dissenting in No. 336, observed: "* * * inexperienced operators of looms in a textile mill may spoil goods, get the machines out or order, have a low production rate, may be in fact an economic liability to the employer, until skill and facility are acquired" (PR. 141–142). The experience of the Wage and Hour Division, in administering the learner provisions of Section 14, reveals that the learners for whom certificates are sought frequently contribute no immediate benefit to their employer, and are in some cases an actual hindrance to productive work because they require supervision by regular employees.[16]

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[15] "Some form of training has always been recognized as an essential part of an organization; regardless of the type of background or preparation any newcomer may have had, the demands of an organization are peculiar to it and necessitate the acquisition of the skills or arts which the particular job imposes on the operator. Introducing the novice to his new job and anticipating a below-average production during the introductory period are the accepted obligations of any supervisory force." Moore, Herbert, *Psychology for Business and Industry* (1942), p. 209.

[16] See, e. g., proceedings before the Wage and Hour Division of the United States Department of Labor in the matter

Thus, the fact that the work of a learner does not immediately contribute substantially to his

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of Application of United States Independent Telephone Association and Sundry Other Parties Pursuant to Section 14 of the Fair Labor Standards Act of 1938, Washington, D. C., December 7, 1939. "Of course, as far as classifying as productive, for the first five or six weeks an operator, you might say that she has no—that she does nothing of any value for the telephone company because she not only isn't able to handle the call without the help of someone else, but there is the cost of the person's time who has to listen in with her, so she is a total loss to the company for her initial period of five or six weeks." (Traffic Supervisor for Illinois Telephone Association, pp. 62–63.)

"I would consider that her first month of employment certainly is a total out-of-pocket wage as far as the telephone company is concerned because she is not handling commercial traffic." (General Traffic Superintendent for the Central Operating Companies of the General Telephone System, Madison, Wisconsin, p. 128.)

See also proceedings before the Wage and Hour Division, United States Department of Labor, in the matter of Learner Regulations in the Textile Industry Pursuant to Section 14 of the Fair Labor Standards Act (held November 28, 29, 30, 1938; reopened October 12 and December 13, 1939): "The expense to the mill runs from $50 to $100 per learner on account of their being non-productive for from one to two weeks, and also because of the loss of production of the coach or teacher." Letter filed by Throwsters Research Institute, dated October 17, 1939.

"It is of course quite obvious that during the learning period the employee is of little benefit to the employer * * *. We believe that the hourly rate paid to learners should be sufficient to maintain them * * *." Letter filed by Rhode Island Textile Association dated, October 5, 1939.

"The production drain and cost of such training actually costs the employer in addition an amount almost equal to that paid the employee while learning." Telegram filed by Throwsters Research Institute, Inc., dated October 24, 1938.

employer's income does not alter the status of the learner as an employee. But as a practical matter, the work of the learner or trainee has consistently been considered by industry to be of very real benefit to the employer, in that he acquires a pool of men familiar with his operations and available for work as regular employees.[17] The general practice of paying learners confirms the fact that the employer derives a benefit from them. "A court would not readily assume that a

[17] "Industry has always educated and trained its members in their work. Work cannot be performed, people cannot work together without this being done. A factory just cannot operate without this being so. One of the important functions of industrial managements is educating and training their manual workers in their work." American Management Association, Production Executive Series No. 72, *Training Manual Workers*, by Russell N. Keppel, Personnel Manager, Bayonne Refinery, Standard Oil Company of New Jersey, 1928, p. 3.

"The cost of a training program cannot properly be regarded as an extraneous or gratuitous expense that can properly be escaped. Building a competent working force for the future is nothing less than assuring the perpetuation of industry itself. The best productive equipment is worthless unless the skilled labor needed for its operation is available. Since every company is going to benefit from the availability of competent labor of the type which it requires, every company should participate, in proportion to its size and ability, in the training of its labor." National Industrial Conference Board, *Training for Industry* (1937), p. 29.

"Training is the most important of all of the personnel functions. No matter how carefully workers are selected, they cannot perform their duties satisfactorily and economically without some sort of training." Greene, James H., *Organized Training in Business* (1937), p. 16.

corporation's management was spending stockholders' money on a mere hobby or an extravagance." *Armour & Co.* v. *Wantock,* 323 U. S. 126, 130.

As a matter of fact, the benefit to the employer in the employment of learners may well outweigh the benefit to the learner. The learner may frequently acquire little training of value to him in other employments, but merely knowledge of use only while he works for the particular employer. In the instant cases, for example, little time is required to learn some of the actual manual operations. Most of the training period is devoted to becoming acquainted with respondents' facilities. Thus, the experienced stenographers in No. 335 were learning respondent's filing system and office practices (CR. 153) for the purpose of better serving respondent, and not for the purpose of improving their general stenographic skills. And the same is true of the experienced trainmen (CR. 97–98, 205–206). In any employment, a new employee must learn the peculiarities of the particular establishment, but the generally accepted practice in industry is to recognize this brief "learning" period as one of the incidents of the employment rather than to treat it as a pre-employment activity.

But it is no more fruitful to discuss the comparative advantages which employer and learner derive from the learning period than to attempt

to determine which party obtains the primary benefit from any employment relationship. The employer receives the worker's output; the worker receives his compensation. Here the employer receives a pool of trained men; the learner receives his training. But the question of who derives the greater benefit does not admit of abstract answer, and may well vary with individual cases. Clearly the employer derives some benefit; respondents here are not offering the training out of philanthropic motives. "The railway company was not conducting a free school for the education of freight brakemen." *Atchison, Topeka & Santa Fe Ry. Co.* v. *Fronk*, 74 Kan. 519, 523, 87 Pac. 698. And in the light of a clearly expressed Congressional purpose to include learners within the scope of the Act, it is plain that the test of benefit to the employer, if it be a test of the employment relation, is met by the trainees here quite as much as by other industrial learners.

Accordingly, insofar as the decisions below rest on the theory that the trainees are of no immediate benefit to the respondents, they fail to afford any basis for distinguishing these trainees from other industrial learners who are clearly employees within the meaning of the Act. The court below, in No. 336, purported to find support for its "benefit" test in this Court's decisions in the portal-to-portal cases (*Jewell Ridge Coal*

Corp. v. *Local No. 6167,* 325 U. S. 161, 163–166; *Tennessee Coal, Iron & R. R. Co.* v. *Muscoda Local No. 123,* 321 U. S. 590, 598). But in those cases this Court held that certain non-productive activities were compensable under the Act because they resulted in productivity at a later time. Similarly, here, the purpose of the training is to enable the performance of productive work for the employer at a later time. To interpret the portal-to-portal cases as requiring a showing of immediate benefit to the employer would not only do violence to this Court's decisions in those cases, but, as applied to the cases at bar, would all but result in reading Section 14 out of the Act by limiting its applicability to that comparatively small group of learners and apprentices whose work results in immediate financial gain to the employer.

The courts below, although admitting that the trainees are learners, have held that they are not "employed as learners" within the meaning of the Act.[18] Since, as we have seen, the activities of the trainees resemble in all material respects the work of other learners who are concededly employed, the view of the courts below must rest upon the theory that the applicability of the Act to learners may depend on the contractual arrangement of the parties. The court in No. 336

[18] This argument is made expressly in No. 336 (PR. 140) and inferentially in No. 335 in which the court below (CR. 381) adopted the reasoning of *Walling* v. *Jacksonville Terminal Co.*, 148 F. 2d. 768, 770 (C. C. A. 5).

quoted *Bowman* v. *Pace*, 119 F. 2d 858 (C. C. A. 5), to the effect that "It is not the purpose of the Fair Labor Standards Act to create new wage liabilities, but where a wage liability exists, to measure it by the standards fixed by law" (PR. 139). But this view is premised upon a regard for the contractual powers of the parties which this Act, like other similar legislation, is expressly designed to limit. Cf. *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, 392-393. An employee under this Act cannot contract to receive less than the amount due under the statute. *Brooklyn Bank* v. *O'Neil*, 324 U. S. 697; *Schulte* v. *Gangi*, No. 517, October Term, 1945, decided April 29, 1946. An agreement to accept nothing or an industrial practice or custom to the same effect stands on no better footing. *Tennessee Coal, Iron, & R. R. Co.* v. *Muscoda Local*, 321 U. S. 590, 602; *Jewell Ridge Coal Corp.* v. *Local No. 6167*, 325 U. S. 161. And agreements to establish a relationship other than that of employer and employee have been disregarded in decisions under the Act. In *Southern Railway Co.* v. *Black*, 127 F. 2d 280 (C. C. A. 4), a contract with the railroad providing that redcaps were licensees rather than employees and were not to receive compensation from the railroad was held not to foreclose the existence of an employment relationship. The statutory standards were held to apply notwithstanding the fact that a wage liability had not previously existed. See *Williams* v. *Terminal*

Co., 315 U. S. 386, discussed *infra*, note 22. See also *Fleming* v. *Palmer*, 123 F. 2d 749 (C. C. A. 1), certiorari denied, 316 U. S. 662; cf. *Walling* v. *American Needlecrafts*, 139 F. 2d 60 (C. C. A. 6). As this Court stated in the *Brooklyn Bank* case, 324 U. S. at 705, quoting from *Midstate Horticultural Co.* v. *Pennsylvania R. Co.*, 320 U. S. 356, 360: "* * * whether the policy of * * * [the] legislation contemplates the one result or the other * * * is the controlling question." As we have seen, the policy of the legislation contemplates the inclusion of learners under the Act. The trainees in these cases are in all the relevant aspects of their duties and their relationship to respondents precisely like other learners. They cannot waive the requirements of the Act by a mere agreement that they shall not be regarded as employees. Such an agreement is particularly vulnerable where, as here, it provides for the payment of substantial sums which can only be characterized as wages.

In holding that the trainees are not "employed as learners" (see *supra*, note 18), the courts below took the view that Section 14 presupposes an employment contract before the learner regulations can become applicable. Under this reasoning, not only learners and apprentices but also messengers and handicapped workers, who are similarly provided for in Section 14, would be within or without the statute depending upon the terms of their individual contracts with their em-

ployer. To imply that Congress intended to let these groups contract away their rights under the Act, while protecting the wages of more skilled labor, would not only "infer Congressional idiosyncrasy" but would "impute to Congress a desire * * * for drastic legal differentiation where policy justifies none." *Keifer & Keifer* v. *Reconstruction Finance Corp.*, 306 U. S. 381, 393, 394.

Finally, the courts below were apparently influenced by the freedom of the respondents not to offer, and of the trainee not to accept, permanent employment at the end of the training period. But this too is characteristic of the employment of learners generally in industry.[19] The courts below also adverted to the trainee's freedom from discipline and right to absent himself from training. But the trainee's freedom is hardly greater than that of any employee, who may absent himself at the cost of his daily wage and at the risk of being denied future employment.[20]

[19] A study made of a representative sampling of applications for learners certificates filed in 1943 with the Wage and Hour Division, United States Department of Labor, indicates that of 64,893 learners hired by 359 firms, 34,857 or 53.7 percent were separated within a year. The reports of only 162 firms indicated the reasons for the separations. Of 17,864 learners separated in these firms, 16,690 or 93.4 percent left voluntarily before completion of the training period.

[20] Certainly the trainee is no freer in these respects than the homeworker, who has been held to be an employee under this Act. *Walling* v. *American Needlecrafts*, 139 F. 2d 60 (C. C. A. 6); *Fleming* v. *Palmer*, 123 F. 2d 749 (C. C. A. 1), certiorari denied, 316 U. S. 692. Cf. *Gemsco* v. *Walling*, 324 U. S. 244.

Thus the trainees in these cases resemble in all the significant aspects of their work the learners in industry in general.[21] The implications of the decisions below would therefore seem to exclude from the Act not only the trainees in these cases, but also the learners in other industries who have long been regarded as employees in industrial practice. The elements of employment which the courts below felt to be essential to the existence of the relationship and to be lacking here, are equally lacking in the case of other industrial learners. The effect of the decisions below is thus to cast grave doubt on the necessity for applications for learner certificates in many industries, and to destroy the protection which Congress intended to assure both employer and employee through the subminimum wage device of Section 14. In the words of Judge Magruder, dissenting in No. 336, the decisions constitute "a serious impairment of the administrative safeguards contained in Section 14 of the Act" (PR. 142).

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[21] This is not to say, of course, that respondents would necessarily be awarded permission to employ these trainees at subminimum wages. Whether respondents would be awarded such permission could only be determined by the Administrator after application by respondents in accordance with the regulations issued pursuant to Section 14. Code of Federal Regulations, Title 29, Part 522.

II

THE TRAINEES ARE INCLUDED WITHIN THE STATUTORY DEFINITION OF THE EMPLOYMENT RELATION

We have seen that Congress, in Section 14, assumed that learners are employees subject to the Act, and, as we shall show, the Act's definition of the employment relationship is sufficiently broad to embrace them. The statute defines "employee" as "any individual employed by an employer" (Section 3 (e)), and also defines "employ" as including "to suffer or permit to work." Senator Black referred to this definition as "the broadest definition that has ever been included in any one act" (81 Cong. Rec. 7657), and this Court, in *United States* v. *Rosenwasser*, 323 U. S. 360 at 362, stated that "a broader or more comprehensive coverage of employees within the stated categories would be difficult to frame."

In defining "employ" as including "to suffer or permit to work," terms which had frequently been employed by legislative draftsmen and to which earlier judicial decisions had given broad scope, Congress made clear its intention to enlarge the scope of employment under the Act far beyond common-law limitations. Cf. *National Labor Relations Board* v. *Hearst Publications*, 322 U. S. 111, 128–129.[22] State statutes prohibiting child

[22] In *Williams* v. *Terminal Co.*, 315 U. S. 386, relied upon by the Jacksonville Terminal Company, amicus (Br. in Opp., pp. 10–11), it was conceded, notwithstanding the absence of a prior obligation on the part of the company to pay wages, that the redcaps were employees. 315 U. S. at 391.

labor in particular occupations or industries regularly used the terms "suffer" or "permit" in defining the scope of their application." In construing these statutes, the highest courts of the States have consistently held that they went beyond the common-law concept of the employment relation and extended to situations in which there was no contractual relation between the minor and the "employer." *Chattanooga Implement & Mfg. Co.* v. *Harland*, 146 Tenn. 85, 239 S. W. 421 (1922); *Curtis & Gartside Co.* v. *Pigg*, 39 Okla. 31, 134 Pac. 1125 (1913); *Purtell* v. *Philadelphia & Reading Coal & Iron Co.*, 256 Ill. 110, 99 N. E. 899 (1912); *People ex rel. Price* v. *Sheffield Farms Slawson-Decker Co.*, 225 N. Y. 25, 121 N. E. 474

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[29] At the time of the enactment of the Fair Labor Standards Act, the phrase "employed, permitted, or suffered to work" was contained in the child labor statutes of thirty States and the District of Columbia. The same phraseology appeared in the Uniform Child Labor Laws recommended in 1911 and in 1930 by the National Conference of Commissioners on Uniform State Laws (Child Labor Bulletin, Vol. I, No. 2, August 1912; Proceedings of the National Conference, 1930), in the Standard Child Labor Law recommended in the Child Labor Legislation Handbook compiled by Josephine C. Goldmark (e. g., issue of 1904, p. 11), and in the Standards Recommended for Child Labor Legislation by the International Association of Governmental Labor Officials. The phrase "employed or permitted to work" was found in eleven State statutes as well as in the federal statutes held unconstitutional in *Hammer* v. *Dagenhart*, 247 U. S. 251, and *Child Labor Tax Case*, 259 U. S. 20. The statutes are cited in the Appendix to this brief, *infra*, pp. ~~88–89.~~ 39-40.

(1918); *Commonwealth* v. *Hong*, 261 Mass. 226, 158 N. E. 759 (1927); *Graham* v. *Goodwin*, 170 Miss. 896, 156 So. 513, 514 (1934). By selecting statutory language in general use which had received consistently broad judicial interpretation, Congress manifested its intent to embody that interpretation in this legislation. *Interstate Commerce Comm.* v. *Parker*, 326 U. S. 60, 65; *Case* v. *Los Angeles Lumber Co.*, 308 U. S. 106, 115; *Keck* v. *United States*, 172 U. S. 434, 446. The intent to give the words "suffer or permit" the same scope they had previously been accorded is confirmed by the fact that Congress employed them in the same context as they had been employed by the States, namely, to regulate the employment of child labor. Section 12. In the Fair Labor Standards Act, however, Congress used the same definitions for wage and hour for child labor regulation. As this Court observed in *Western Union Telegraph Co.* v. *Lenroot*, 323 U. S. 490, 504: "The definitions of this Act apply to the wage and hour provisions, as well as to the child labor provisions." The meaning of "suffer or permit to work," therefore, is as broad when applied to the wage and hour provisions of the Act as when applied to its child labor provisions.

In view of the Congressional intent to extend the application of the Act beyond common-law limitations, it would seem to follow, *a fortiori*,

that persons who would be considered employees at common law are within the concept of "employee" as used in this Act. Although this Court observed in *National Labor Relations Board* v. *Hearst Publications, supra,* that "few problems in the law have given greater variety of application and conflict in results" than the question of the scope of employment at common law (322 U. S. at 121), railroad trainees have repeatedly been held to be employees at the common law. Numerous decisions have held them to be employees under the "fellow servant" doctrine with the result that recovery for injury was denied. *Huntzicker* v. *Illinois Central R. Co.,* 129 Fed. 548 (C. C. A. 6); *Millsaps* v. *Louisville, N. O. & T. Ry. Co.,* 69 Miss. 423, 13 So. 696; *Smith* v. *Western & Atlantic R. R. Co.,* 134 Ga. 216, 67 S. E. 818; *Weisser* v. *Southern Pacific R. R. Co.,* 148 Calif. 426, 83 Pac. 439. Similarly, numerous decisions under the Federal Employers' Liability Act [24] have permitted recovery by railroad trainees, like those now before this Court, on the ground that they are employees of the railroads under the common law.[25] *Brown* v. *Chicago, R. I. & P. Ry. Co.,* 315 Mo. 409, 286 S. W.

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[24] Act of April 22, 1908, c. 149, 35 Stat. 65, 45 U. S. C. 51.

[25] The Federal Employers' Liability Act adopted the "conventional" concept of the employment relationship. *Robinson* v. *Balt. & Ohio R. R.,* 237 U. S. 84, 94; *Hull* v. *Philadelphia & Reading Ry. Co.,* 252 U. S. 475, 479.

45; *Rief* v. *Great Northern Ry. Co.*, 126 Minn. 430, 148 N. W. 309; *Findley* v. *Coal & Coke Ry. Co.*, 76 W. Va. 747, 87 S. E. 198; cf. *Chesapeake & Ohio Ry. Co.* v. *Harmon*, 173 Ky. 1, 189 S. W. 1135; *Atchison, Topeka & Santa Fe Ry. Co.* v. *Fronk*, 74 Kan. 519, 87 Pac. 698. Thus the trainees have been held to be employees at common law, both for the purpose of defeating recovery for injuries under the "fellow servant" doctrine, and for the purpose of allowing recovery under Employers' Liability Acts. In *Walling* v. *Jacksonville Terminal Co.*, 148 F. 2d 768 (C. C. A. 5), however, the court declined to follow these decisions in determining whether railroad trainees are employees under the Act for the reason that "wages are due according to principles of contract, not of tort." But where the "principle of tort" involved has been used both to grant and to withhold recovery for injury, policy reasons for differentiating between the scope of employment in tort and contract actions at common law would seem largely to disappear. In any event, as we have seen, the statutory definition incorporates into the Act a concept of employment which the child labor decisions demonstrate beyond question was intended to disregard principles of contract. Thus, even if the Act merely adopted the common-law concept of the employment relationship, the

tort cases cited above would establish that the trainees here involved are employees.[28]

The statutory definition and the specific provision for learners cannot be construed as limitations on the common-law principle that extended to these trainees the rights and liabilities of the employment status. On the contrary, the social policy embodied in the Fair Labor Standards Act plainly envisages a broad, rather than a narrow, application of the employment concept. Cf. *National Labor Relations Board* v. *Hearst Publications*, 322 U. S. 111. Cf. *Virginian Ry.* v. *System Federation*, 300 U. S. 515, 557. Consequently, these trainees who would be employees at common law, are clearly embraced by the statutory definitions. There can, of course, be no doubt that the trainees perform work for the respondents. They actually fire the engines, throw the switches, couple the cars, load the freight, and perform the various clerical, messenger, and porter functions performed by regular employees. Whether this work benefits the respondents (who as we have seen derive as much "benefit" from these trainees as any employer customarily derives from the work of his "learners") is hardly relevant in determining whether they "suffer or permit" it to be done. There is no question but that respond-

[28] See also *Williams* v. *Evans*, 139 Minn. 32, 166 N. W. 504 (1918), in which learners were regarded as employees for purposes of a State minimum wage statute.

ents "permit"—indeed, they actually require—the trainees to perform services necessary to the operation of the trains as a condition to their obtaining regular employment. Under the circumstances, the trainees fall plainly within the literal language as well as within the clear intent of the legislation."

The statutory definition of the employment relation is thus well calculated to effectuate the intent of Congress to include learners within the scope of the Act. Whether one is "employed" as a learner within the meaning of Section 14 is determined not by comparing the "benefits" to the learner and the employer nor by the terminology of the contract between the two, but by whether the learner is employed or suffered or

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[27] It is, of course, not necessary to explore at this time the full limits of "suffer or permit to work." Thus, whether, as suggested by the court below in No. 336, the Act would not apply to the novelist, who sought work in respondents' train yards to aid him in the preparation of a novel, is a question which need not be answered on the present record. Whatever may be the full scope of "suffer or permit to work" it plainly encompasses the normal industrial pattern here presented. "And what is reasonably clear in a particular application is not to be overborne by the simple and familiar dialectic of suggesting doubtful and extreme cases." *Kirschbaum Co.* v. *Walling*, 316 U. S. 517, 526, quoting from *Santa Cruz Co.* v. *Labor Board*, 303 U. S. 453, 467. Cf. *National Labor Relations Board* v. *Hearst Publications*, *supra*, at 130: "It is not necessary in this case to make a completely definitive limitation around the term 'employee.'"

permitted to work by the employer. In holding these trainees to be outside the scope of the statute, the courts below not only imported unwarranted limitations into Section 14 but failed to give effect to the statutory definition of the employment relationship.

CONCLUSION

The judgments below should be reversed.

Respectfully submitted,

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APPENDIX

Use of Words "Employed, Permitted, or Suffered To Work" in Child Labor Legislation at Time of Enactment of Fair Labor Standards Act

Alabama (Code 1940, title 26, ch. 7, Art. 3, sec. 343)
Arizona (Code 1939, sec. 56–301)
California (Labor Code, Div. II, Pt. 4, sec. 1290)
Colorado (1935 Stats. ch. 97, sec. 182)
Delaware (Rev. Code 1935, #3601, sec. 11)
District of Columbia (D. C. Code 1940, sec. 36–201)
Florida (Laws 1941, ch. 20955, sec. 3)
Idaho (Code 1932, Vol. 3, ch. 8, sec. 43–801)
Illinois (Rev. Stats. 1941, ch. 48, sec. 17)
Kansas (GS 1935, sec. 38–601)
Louisiana (General Statutes, sec. 4319)
Maine (RS 1930, ch. 54, sec. 18)
Maryland (Code 1939, Art. 100, sec. 4)
Michigan (Compiled Laws of 1929, sec. 8325)
Minnesota (Masons Stats. 1927, sec. 4094)
Missouri (Rev. Stats. 1939, sec. 9619)
Nebraska (Rev. Stats. 1943, sec. 48–301)
New Hampshire (Public Laws, ch. 118, sec. 18)
New Jersey (Rev. Stats. 1937, Ti. 34, sec. 2–2)
New Mexico (Code 1929, sec. 80–101)
North Carolina (P. L. 1937, ch. 317, sec. 1)
North Dakota (1923, ch. 155, sec. 1)

Ohio (Genl. Code, 1940, sec. 12993)
Oregon (Comp. Laws 1940, sec. 102–401)
Rhode Island (Pub. Laws 1936, ch. 2360, sec. 1)
Tennessee (Code 1932, sec. 5315)
Utah (1933, ch. 11, sec. 1)
Vermont (Pub. Laws 1933, sec. 6583)
Virginia (Code 1942, sec. 1808a)
West Virginia (Code, 1931, ch. 21, Art. 6)
Wyoming (Rev. Stat. 1931, sec. 20–301)

USE OF WORDS "EMPLOYED OR PERMITTED TO WORK" IN CHILD LABOR LEGISLATION AT TIME OF ENACTMENT OF FAIR LABOR STANDARDS ACT

Arkansas (Pope's Digest, 1937, vol. II, sec. 9067) (Acts 1915, p. 1505)
Connecticut (Genl. Stats. supp. 1939, sec. 1320e)
Georgia (Code 1933, Title 54, sec. 54–301)
Indiana (Burns' Stats. 1933, sec. 28–518)
Kentucky (R. S. (1942), ch. 339, sec. 339.010)
Mississippi (Code 1930, sec. 4645)
Montana (R. C. 1935, sec. 3095)
Oklahoma (Stats. 1931, sec. 10833)
Pennsylvania (Purdon's Stats. 1936, Ti. 43, sec. 42)
Wisconsin (1937, Special Session, ch. 6, sec. 2)
Massachusetts (Genl. Laws, 1932, ch. 149, sec. 60)

FEDERAL CHILD LABOR STATUTES USING WORDS "EMPLOYED OR PERMITTED TO WORK"

Act of September 1, 1916, c. 432, 39 Stat. 675
Act of February 24, 1919, c. 18, 40 Stat. 1057, 1138

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